

Recording Requested By

When Recorded Mail To:

City of Santa Barbara
Community Development Dept.
Attn: Housing Programs
Post Office Box 1990
Santa Barbara, CA 93102-1990

THIS SPACE RESERVED FOR RECORDER

APN: _____

No Fee Per Govt. Code § 6103

Address: _____
Santa Barbara, CA 93_____

**GRANT OF PREEMPTIVE RIGHT: RESALE RESTRICTION COVENANT AND
OPTION TO PURCHASE
SECURED BY PERFORMANCE DEED OF TRUST**

This Grant of Preemptive Right: Resale Restriction Covenant and Option to Purchase (hereinafter "Covenant") is dated as of this _____ day of _____ 20____, by and between _____, (hereinafter "Owner") and _____ (hereinafter "Seller") and the City of Santa Barbara, a body politic, (hereinafter "City").

This Covenant applies to the real property commonly known as _____, Santa Barbara, California, which is more fully described in the Legal Description attached and incorporated by this reference herein (hereinafter "Property").

This Covenant rescinds and supersedes the previous affordability control document on the Property, which was titled "Grant of Preemptive Right: Resale Restriction Covenant and Option to Purchase" recorded _____ as Document No. _____ official records, Santa Barbara County

RECITALS:

WHEREAS, the City has provided development incentives to this project (such as allowing development at greater density than City zoning allows in the absence of a special permit, or other incentives); and,

WHEREAS, Seller and Owner have benefited from these development incentives through the opportunity to purchase the Property at a price substantially below fair market value; and,

WHEREAS, the intent of the City in providing these development incentives is to preserve the affordability of the Property for persons with incomes within a specified range and,

WHEREAS, subsequent Owners will benefit from the limitation on the purchase price of the Property which this Covenant requires; and,

WHEREAS, the intent of Seller is to preserve through this Covenant the affordability of the Property for persons with incomes within a specified range and to assign to the City the right to enforce compliance with this Covenant;

NOW, THEREFORE, in consideration of the benefits received by the Parties, the Parties agree as follows:

I. DEFINITIONS

A. "Owner": (i) _____, (ii) any subsequent purchaser (whether an occupant purchaser or non-occupant titleholder), devisee, successor trustee, transferee, or grantee of a Purchaser or subsequent purchaser, or (iii) any other holder of title to the Property or any portion thereof or interest in the property except City-approved lenders or easement holders.

B. "Encumber" "Encumbrance": Shall include any mortgage, deed of trust, lien, security agreement or other instrument intended to secure an obligation or indebtedness.

C. "Institutional Lender": Any bank or savings and loan association which is licensed to engage in the business of providing mortgage financing (purchase money or refinance) for residential real property

D. "Household": All those persons - related or unrelated - who occupy a single housing unit.

E. "Three-or-more-person Household": Three or more persons - who will live in the property as their primary residence and who are related by blood, marriage, law, or registered domestic partners. Persons (including sons and daughters) aged 18 or over who live away from home for purposes of either work or study and return to the household periodically will not be counted as household members.

F. "Median Annual Income": Median annual income shall be determined by reference to income figures for the Santa Barbara area as published by the U.S. Department of Housing and Urban Development (HUD). In the event such income figures are no longer published, or have not been updated for a period of at least eighteen (18) months, the City may use or develop such other reasonable and comparable substitute figures as it may choose.

G. "Principal place of residence": The place where a person or persons reside on a full-time basis for a minimum of ten months out of each calendar year, unless otherwise reviewed and excepted by the City.

H. "Resident": A person who provides written verification of current residency or employment within the area bounded by the Pacific Ocean on the south, Ventura County line on the east, the Gaviota tunnel on the west and the ridge-line of the Santa Ynez mountains on the north generally known as the South Coast portion of Santa Barbara County.

I. "Residential Real Estate": Real property including developed or undeveloped residentially-zoned land, mobile homes and manufactured housing.

J. "Transfer": Any sale, assignment, or transfer, either voluntary or involuntary, or by operation of law, whether by deed, contract of sale, gift, devise, bequest, trustee's sale, deed in lieu of foreclosure, or otherwise, of any interest in the Property, including but not limited to, a fee simple interest, joint tenancy, life estate, leasehold, or an interest evidenced by a land contract by which possession of the Property is transferred and Owner retains title.

K. "Transferee": A person who receives property being transferred

II. TERM AND ENFORCEABILITY

A. Term

This Covenant shall bind and the benefit hereof shall inure to the Owner, his or her heirs, legal representatives, executors, successors in interest and assigns, and to the City, its successors, designees, or assigns until _____ years from the effective date of this Covenant. If an owner occupies the unit for the full _____ term in compliance with this Covenant, this Covenant shall expire and the Owner may sell the Property to any buyer for any price.

However, if the Owner sells the Property during the term of this Covenant, the Transferee will be required to sign and record a new Covenant that begins a new _____ period of price and occupancy restrictions. This requirement will continue for each new owner of the unit.

B. Covenants Running With the Land; Equitable Servitude

The Property is held and hereafter shall be held, conveyed, hypothecated, encumbered, leased, rented, used, and occupied subject to these covenants, conditions, restrictions and limitations. All of the herein-stated covenants, conditions, restrictions and limitations are intended to constitute both equitable servitudes and covenants running with the land.

C. Binding Effect

Any purchaser of the Property or of any portion of or interest in the Property, by the acceptance of a deed therefore, whether from Owner or from any subsequent owner of the Real Property, or by the signing of a contract or agreement to purchase the same, shall, by the acceptance of such deed or by the signing of such contract or agreement be deemed to have consented to and accepted the covenants, conditions, restrictions and limitations set forth herein.

D. Enforceability

In order to preserve through this Covenant the affordability of the Property for persons with incomes within a specified range, the Owner hereby grants and assigns to the City the right to review and enforce compliance with this Covenant, and in furtherance of this right, grants to the City an Assignment of Rents, described under Section XIII of this Covenant, and an Option to Purchase the Property, described under Sections III and XIV of this Covenant, and assigns to the City any proceeds payable to the Owner from a foreclosure or deed in lieu of foreclosure in excess of the Maximum Sale Price, as described in Section XII.B of this Covenant.

III. DEED OF TRUST: SUBORDINATION; DEFAULT; NOTICE TO CITY; RIGHT TO CURE

A. Subordination

This Covenant shall be subject and subordinate to the lien of an approved first deed of trust which secures a loan made by an Institutional Lender (hereinafter "Institutional First Deed of Trust"), subject to the following conditions and limitations:

1. Limit on Amount

The amount of the Institutional First Deed of Trust shall not exceed the following amount: the City approved purchase price paid by Owner, less the approximate balance on City financing (if any) as of the date of this Covenant (noted in Section XX below). The subordination of this Covenant pursuant to this Section III shall not apply to any Institutional First Deed of Trust that exceeds such amount, absent specific written approval from the Community Development Director.

2. Default; Right to Cure

In the event of default under any deed of trust, including the City-approved Institutional First Deed of Trust, the City shall have the same right as the Owner to cure the default and redeem the Property prior to foreclosure sale. Such redemption shall be subject to the same fees, charges and penalties which would otherwise be assessed against the Owner. Nothing herein shall be construed as creating an obligation on the part of the City to cure any such default nor shall this right to cure and redeem operate to extend any time limitations in the default provisions of the underlying deed of trust or mortgage.

3. Right to Exercise Option

Any default under a deed of trust, including the Institutional First Deed of Trust, shall trigger the City's right to exercise its option to purchase the Property, as described more fully in Section XIV below, and the City may exercise its option to purchase the Property pursuant to such provisions.

4. Request for Notice of Default

The holder of the Institutional First Deed of Trust shall be under no obligation to provide notice of default to the City other than as required pursuant to a duly filed request for notice of default under Section 2924b of the Civil Code. In the event the City elects to exercise such option to purchase, subsequent to a default on the Institutional First Deed of Trust, and notwithstanding any language contained herein to the contrary with regard to the rights of the City, the City must complete such purchase no later than the end of the period established by Section 2924c of the Civil Code for the reinstatement of a monetary default under the deed of trust.

B. Rights of Institutional Lender

Subject to these above-stated conditions and limitations, this Covenant shall not impair the rights of such Institutional Lender, or such Lender's assignee or successor in interest, to foreclose or take title to the Property pursuant to the remedies in the Institutional First Deed of Trust, or accept a deed in lieu of foreclosure in the event of default by a trustor under the Institutional First Deed of Trust. Subsequent to the Institutional Lender acquiring title through foreclosure sale or accepting a deed in lieu of foreclosure under such Institutional First Deed of Trust, this Covenant shall be terminated and of no further force or effect as an encumbrance against the Property (or any owners, tenants or encumbrancers in the chain of title), and the Institutional Lender or subsequent transferee may sell the Property to any purchaser at any price or lease the Property to any tenant at any rental amount, without thereafter being subject to this Covenant. At the request of a Lender or its title insurer, City will execute a quitclaim deed or other recordable instrument in order to confirm the termination of this Covenant.

C. Notice to City by Owner

Prior to recordation, Owner shall notify City of any deed of trust, financing instrument or mortgage to be recorded against the Property, and shall provide the City with the information needed by the City to record a Request for Notice of Default. Note that the City's approval of any financing is required under Sections V and XI below.

IV. OCCUPANCY, LEASING AND OWNERSHIP OF OTHER REAL PROPERTY

A. Property as Principal Residence

Owner shall occupy the Property as his/her/their principal place of residence. During the time the Property is vacant while being actively offered for sale by Owner, this owner-occupancy requirement shall not apply; however, Owner may not rent the Property during such period.

B. Rental of Property

Owner shall not rent or lease the Property without prior written approval by the City. Owner may rent out a room without City approval as long as all Owners of record continue to reside in the property as their principal place of residence.

1. Modification of Occupancy Restrictions

The City Community Development Director or the Director's designee may approve modifications to these occupancy requirements and rental restrictions if Owner demonstrates need due to illness, temporary employment relocation, sabbatical, extended travels, or other good cause.

2. Approval of Rental Agreement

Any lease or rental agreement for the Property approved pursuant to this section shall conform to the affordability requirements established by the City, as these requirements are in effect at the time of the proposed lease or rental. Any lease or rental without prior written approval by the City violates this Covenant, and will result in an assignment of all rents due or collected, as described in Section XIII below.

3. Submittal of Approved Rental Agreement to City

As soon as possible after Owner has requested and obtained the City's written approval to rent the Property, Owner shall provide a copy of the lease or rental agreement, the names of the renters, the rent being charged, and the new temporary address of the Owner. If the terms of any lease or rental agreement are amended, City shall be notified in writing. Owner shall notify City when he/she/they re-occupy the property.

C. Ownership of other Residential Real Estate

Owner may NOT have any form of ownership or ownership interest in whole or in part, (including long-term leaseholds, partnership, limited partnership or limited liability ownership) in or to any other residential real estate as defined herein, at time of application for ownership or concurrently with the ownership of this Property.

D. Modification of Ownership Requirements

The City Community Development Director or the Director's designee may approve modification to Item C above if Owner demonstrates need or other good cause. Ownership of any other residential real estate in whole or in part without written approval by the City violates this Covenant, and will result in default and remedies as described in this Covenant.

V. REQUIREMENTS FOR CITY APPROVAL OF TRANSFER, REFINANCE OR OTHER ENCUMBRANCE

A. No Further Encumbrance or Lien

Except as provided in Section III above and Section V.B below, the Property shall not be transferred, financed, refinanced, or otherwise encumbered in any way without the prior written approval of the City Community Development Director or the Director's designee.

B. Exceptions

The following transfers are exceptions to the requirements of Section V.A above and do not require prior written approval by the City Community Development Director, or the Director's designee; however, Owner is required to notify the City in writing upon any of the following transfers:

1. Death

A transfer resulting from the death of an Owner where the Property is transferred to the spouse who was a co-owner prior to the transfer.

2. Marriage

A transfer by an Owner where the Owner's spouse becomes the co-owner of the Property.

3. Divorce

A transfer resulting from a decree of dissolution of a marriage or legal separation from a property settlement agreement incidental to such a decree by which a spouse who is an Owner become the sole Owner of the property.

4. Trust

A transfer by an Owner into an inter vivos trust in which the Owner is named the Trustee and the Beneficiary.

VI. CITY OPTION TO PURCHASE UPON SALE OR OTHER TRANSFER

A. Grant of Option and Right of First Refusal

In consideration of the benefits received by Owner, Owner hereby grants to the City, and the City hereby accepts an Option to Purchase, which the City may exercise anytime Owner intends to sell or transfer the Property.

B. Notice to City

Anytime during the term of this Covenant when Owner intends to offer to sell, convey, or transfer the Property or any portion thereof, Owner shall give to the City written notice at the address and in the manner specified in Section XVI.F below, of its intent to sell the Property with a summary of the proposed transfer.

C. Exercise of City Option

The City Option may be exercised at the times and on the conditions set forth below:

1. The City shall have 30 days after receipt of written notice from Owner to respond in writing to Owner of the City's intent to exercise its Option to purchase.
2. The City shall have an additional 45 days to purchase the Property at the maximum price calculated as per Section X below. The length of any delays caused by Owner or Owner's agents shall extend such time. Owner shall be responsible for all costs and provide all reports as is customary for sellers of residential property in Santa Barbara, including title insurance, zoning inspection, termite report and any other maintenance repairs as disclosed by property and/or termite inspection report(s).

D. Term of Option

The term of the City Option shall be from the date first appearing on this Covenant until the expiration of the affordability term.

VII. SALE OF PROPERTY TO PRIVATE PARTY

A. Owner's Right to Sell

If the City does not exercise its right to purchase the Property during the affordability term pursuant to Section VI above, this Section VII shall take effect and Owner shall have the right to sell or transfer the Property to a Qualified Transferee (hereinafter "Transferee"), subject to the terms and conditions of this Section.

B. Approval of Sale by City

1. The City shall oversee the transfer or sale of the Property to any Transferee. No transfer or sale of the Property shall occur under this Section without the prior written approval of the City Community Development Director, or the Director's designee.
2. The City may approve a proposed transfer of the Property provided that Owner is not in default under this Covenant, and that the City does not elect to exercise its Option to Purchase, and that the City has determined that Owner and Owner's proposed

Transferee has complied with all of the requirements and provisions of this Covenant and affordable policies then current.

3. Owner or Transferee shall submit to the City the proposed sale contract, escrow instructions, and all other related documents that shall set forth the terms of sale or transfer of the Property. Contract shall incorporate information including but not limited to the following:

- a. Sales Price
- b. Price to be paid by the Transferee for Owner's personal property, if any, and for the services of Owner, if any.
- c. All other amounts of money or other consideration, if any, concerning the Property to be paid by the Transferee to the Owner or any other person or entity, and reason such payment is made.
- d. The down payment to be paid by the Transferee
- e. Financing terms

4. Transferee shall submit to the City Community Development Director, or the Director's designee, information including but not limited to the following:

- a. Documents to Support Identification
- b. Documents to Support Residency (such as utility bill or rental agreement)
- c. Documents to Support Income and Assets
- d. Documents to Support Savings and Recent Bank Activity
- e. Documents to Support Current Debts
- f. Documents to Support Loan Terms and Provisions

5. The information provided shall be used by the City to determine the eligibility of the Transferee.

6. The City reserves the right to collect a reasonable fee to cover the City's costs of verifying information and administering its rights and obligations under this Covenant.

VIII. ELIGIBILITY OF TRANSFEE UPON SALE

Owner shall not sell or transfer the Property to any Transferee who does not satisfy all of the following requirements:

- A. Each Transferee shall be a Resident as defined herein.
- B. Each Transferee shall certify his/her/their intent to occupy the Property as his/her/their principal place of residence.
- C. Transferee(s) shall not own other residential real estate (as defined herein) at the time of application for the purchase of this Property. The transferee's total equity in residential real estate held at any time during the two years prior to purchase of the affordable unit shall not have exceeded fifty percent (50%) of the purchase price of this Property. This prohibition may be waived for a particular buyer by the Community Development Director for good cause.

D. The combined annual gross income for all Transferees shall not exceed one hundred _____ percent (____%) of the Area Median Income (AMI) in Santa Barbara County, adjusted for household size as published by the U.S. Department of Housing and Urban Development (HUD).

E. If Transferee has investment assets (stocks, bonds, cash, bank accounts, certificates of deposit, and other investment property or possessions, but not including retirement accounts) income will be counted or imputed from such assets. No income will be counted or imputed from those assets to be used for the down payment and closing costs on the affordable unit, except to the extent that the down payment exceeds twenty percent of the purchase price. The Community Development Director or the Director's designee will determine the method of imputing income.

F. Transferees are required to provide a down payment of at least five percent (5%) of the purchase price. The Transferee's down payment must not exceed 40% of the purchase price, and consequently the Transferee's income must be sufficient to support the mortgage payment on a mortgage for 60% of the purchase price. Transferees may receive all or a portion of the down payment as a gift provided the gift does not exceed 20% of the purchase price and the donor provides a gift letter. Gifts include funds given to Transferee within 12 months prior to the purchase.

G. To assure affordability to the Transferee, Transferee's income, less approved business expenses if self-employed, shall be sufficient so that at least twenty eight percent (28%) and no more than forty percent (40%) of such income will be required to pay for housing expenses, including loan payments, homeowner's association fees, taxes, and insurance. For purposes of this calculation, only the income of the occupant purchasers shall be included. The mortgage loan payment for this calculation shall be based on the fully indexed interest rate rather than an introductory or "teaser" rate.

H. To assure continued affordability to the Transferee, no purchase money financing obtained or assumed by Transferee which requires graduated interest, graduated payments, a balloon payment or negative amortization shall be permitted unless approved by the City Community Development Director or the Director's designee.

I. Transferees of units with three or more bedrooms must be three-or-more-person households (as defined herein), and all adults must be owners of record. The Community Development Director or the Director's designee may approve exceptions to this household size requirement in cases where the buyer demonstrates a need for a large unit, or where necessary to prevent undue hardship.

J. A credit ("FICO") score within the bottom quartile of credit scores nationwide shall automatically disqualify a buyer from owning an affordable unit. The credit score requirement may be waived by the Community Development Director on a case-by-case basis for good cause (such as mitigating circumstances for the low credit score).

IX. REQUIREMENTS FOR APPROVED SALE TRANSACTION

A. Price

The sale price shall not exceed the amount calculated pursuant to Section X below

B. Recordation of Replacement Covenant

Upon transfer each Owner and Transferee shall execute and cause the recordation of a new Resale Restriction Covenant and Option to Purchase ("Replacement Covenant") which shall replace this Covenant and be substantially similar to this Covenant. The Replacement Covenant shall contain revisions to reflect any changes to the City's adopted affordability policies. The Replacement Covenant shall have a term of 90 years.

C. Escrow Documents

Each Owner and Transferee shall approve and sign City's escrow instructions, which instruct escrow regarding the requirements of this Covenant and City financing, if any. Owner and Transferee shall

provide the City with a copy of the final sale contract, settlement statement, signed escrow instructions, and any other document that the City may reasonably request.

D. Unapproved or Fraudulent Sale

In the event a sale or transfer is made in violation of the terms of this Covenant or false or misleading statements are made in any documents or certification submitted to the City for its approval of the sale or transfer, the City may declare a default under the Covenant. The City shall also have the right to file action at law or in equity to force the parties to terminate and rescind the sale contract and declare the sale void notwithstanding the fact that the sale or transfer may have closed and become final as between the seller and purchaser. In any event, any costs, liabilities or obligations incurred by the seller and purchaser for the return of any moneys paid or received in violation hereunder or for any costs and legal expenses incurred by City in the enforcement of this Covenant, shall be borne by the seller and purchaser, and not by the City. The seller and purchaser shall hold the City and its designees harmless and shall fully indemnify the City including, but not limited to, payment of all City fees and costs, for any action the City takes to enforce the terms of this Covenant.

X. RESALE PRICE CALCULATION

A. Calculation of Resale Price

Except as provided in Section III above, the sale price of the Property shall not exceed the City-approved purchase price paid by Owner (less the amount of mid year adjustment, if applicable) adjusted by the percentage increase in the Area Median Income (AMI) for the Santa Barbara area during the period in which the Owner owned the Property and occupied it in compliance with the requirements of this Covenant. In some cases a "mid-year adjustment" will apply, as specified below.

B. Mid-Year Adjustment

To allow for a projected change in the maximum sale price between publication dates of the AMI, the maximum sale price may be increased by a "mid-year adjustment" calculated as follows:

1. The City-approved purchase price paid by Owner, multiplied by the following estimate of the as yet unpublished change in the AMI:

One-half of the average annual percentage change in the AMI over the previous two years, divided by twelve and multiplied by the number of months between the last publication of the AMI and the date of sale of the unit. Note: this adjustment is based on "one-half of the average" in order to apply a conservative estimate of the increase in the AMI.

2. However, no mid year adjustment shall be added unless at least four months have passed between the last publication of the AMI and the date of calculation of the sale price of the Property.

3. If the "mid year adjustment" is included in the sale price at any sale, on the next sale the price calculation will be adjusted as follows: the amount of mid year adjustment which was included in the price paid by Owner shall be subtracted from the price paid by owner. This is to assure that the price is not changed by both the mid year adjustment (which is based on a future estimate of the AMI), and the actual change in the AMI which later became known.

C. Owner Improvements Adjustment

To help assure continued affordability to subsequent purchasers, no price adjustment or other reimbursement will generally be allowed for property improvements made by the owner. The owner is of course free to make improvements for the owner's benefit and enjoyment, but will not be compensated for such improvements upon sale of the property. The Community Development Director may approve, on a case-by case basis, exceptions to the policy against price changes for property improvements, provided all of the following conditions are met:

1. The improvements were permanent and substantial.
2. The improvements were not of a decorative or maintenance nature, such as painting, wall coverings, window coverings, or replacement of carpeting. Landscaping plantings and hardscape

may be eligible for a price change, but only to complete a large area (such as a rear yard) that the developer left unimproved.

3. The improvements were not of a luxury nature, such as a spa, whirlpool tub, or brick bar-b-que. A deck or patio may be eligible, but only to the extent needed to provide a reasonable amount of usable outdoor living space. A fireplace addition may be eligible.

4. The allowed price increase for all improvements may not exceed the lower of:

a. The actual out-of-pocket cost of eligible improvements paid by owner for design, materials and labor (as shown by receipts),

b. The actual present value of the improvements as determined by City Housing Programs staff. This is the amount that the improvements would add to the market value of the unit at time of sale (ignoring the affordability restrictions). It should be noted that the value added by home improvements is usually less than the cost of the improvements

c. Ten percent (10%) of the otherwise maximum affordable sale price of the unit.

d. The combined actual present value of the eligible improvements as described above is at least one percent (1%) of the affordable sale price of the unit; and

e. The improvements were done with all required City permits and in compliance with any requirements imposed by the homeowners' association and CC&R's.

5. Owners who are planning to make improvements and hope to eventually add the value of the improvements to their sale price are required to request pre-approval from the City's Housing Programs office.

D. Other Requirements and Conditions

1. No price increase whatsoever shall be allowed during such time, if any, that Owner was in violation of any requirement of this Covenant.

2. City staff or staff's designee shall be afforded reasonable opportunity to inspect the Property for damage or deferred maintenance. If the property is damaged or if there is substantial deferred maintenance, Housing Programs staff may lower the maximum sale price by the amount needed either to repair the damage or to carry out the needed maintenance.

3. The owner may not require the buyer to pay any commissions or other costs of sale typically paid by sellers of residential real property.

4. The price paid to Owner by the Transferee for Owner's personal property and/or Owner's personal services must be disclosed to the City in writing during escrow, and shall not exceed the current fair market value of such property and services.

5. The maximum sale price is not a guarantee that the owner will be able to sell for that price. If the Property sells for less than the maximum sale price, such lower price will become the basis for the calculation of the maximum sale price upon the next sale of the Property.

XI. REQUIREMENTS FOR CITY APPROVAL OF FINANCING OR REFINANCING

A. Approval by City

The terms of all financing secured by the property must be approved by the City, whether at the time of sale or at any other time. Purchase financing and refinancing may only be provided by licensed institutional lenders and each owner must be included in financing documentation.

B. Requirements for Approval

1. The Owner is in full compliance with the City's affordability requirements

2. The terms of the new loan are more favorable than the old loan

3. Owner's total secured loans-to-value ratio does not exceed 80%

4. The debt payment-to-income ratio will not be higher than it was upon owner's purchase of the property
5. No additional cash is taken out other than the loan costs unless approved in advance by the City. Any City-approved cash-out is used to pay off outstanding installment consumer debt through escrow.
6. City may review an owner's credit and may decline approval of proposed refinancing in cases where the borrower's credit is poor.
7. The City may approve interest-only loans on a case-by-case basis for borrowers with excellent credit and a favorable loan-to-value ratio. Financing which may result in balloon payments or negative amortization including "reverse mortgages" will not be approved.
8. If the City has provided financing secured by a deed of trust, the City may agree to subordinate if City is assured that its security interest and the owner's ability to repay remain strong.

C. Modification of Financing Requirements

The City Community Development Director or the Director's designee may approve modifications to Item B above if Owner demonstrates need or other good cause.

XII. BEQUEST OR FORECLOSURE, INSURANCE AND CONDEMNATION

A. Transfers by Operation of Law

In the event of a transfer of the Property by operation of law such as by devise, bequest, foreclosure on any financing not exempted under Section III above, or deed in lieu of foreclosure on any such financing, to a person who does not meet the requirements of Section VIII, the transferee or the estate of the decedent shall be bound by the provisions of this Covenant; however, the City shall not declare a default before allowing such person a reasonable period of time, not less than 90 days, to convey the Property to an eligible purchaser in conformance with all of the provisions of this covenant, including the maximum price.

B. Transfer Through Foreclosure

In the event that the Property is transferred through foreclosure, a deed in lieu of foreclosure or a trustee's deed upon sale, a default in a contract of sale, or through any other means, for the purpose of curing or preventing the default by Owner on a loan or obligation, any amount of the sale price which is over and above the Maximum Sale Price calculated according to Section X above, and which would otherwise be payable to Owner after full satisfaction of the lender's loan and costs, shall be due and owing to the City in consideration of the development assistance given by the City.

C. Insurance Proceeds

Any hazard insurance proceeds received by the Owner which are not used to repair or rebuild the Property, and any condemnation award collected by the Owner, shall be distributed as follows:

1. First, to lenders according to the recording priority of their deeds of trust against the Property, as provided by law.
2. If any funds remain after the lenders have been paid, then to the Owner, up to but not to exceed the net amount (after payment of encumbrances) that Owner would have received under a sale at the Maximum Sale Price calculated according to Section X above.
3. If any funds remain after the Owner has been paid, the remainder shall be paid to the City.

XIII. DEFAULTS AND REMEDIES: ASSIGNMENT OF RENTS

A. Notice of Default

Upon any violation of the provisions of this Covenant the City may declare a default under this Covenant by delivering written notice thereof to the Owner. Upon the declaration of a default the City may apply to a court of competent jurisdiction for specific performance of the Covenant, for an injunction prohibiting a proposed sale or transfer in violation of this Covenant, for a declaration that the prohibited transfer violates this Covenant and is, therefore, void, or for any such other relief as may be appropriate.

B. Assignment of Rents

Owner hereby assigns to City the right to receive the rents due or collected during the entire period the Property is occupied in violation of any of the terms of this Covenant.

C. Remedies Not Exclusive

The remedies stated herein shall not be exclusive, but shall be cumulative to all other remedies and rights the parties may lawfully exercise.

XIV. PURCHASE OPTION UPON DEFAULT

A. Option to Purchase Upon Default

In addition to the remedies provided the City elsewhere in this Covenant, Owner hereby grants to the City the option to purchase the Property effective upon the declaration of a default.

The option to purchase may be exercised upon a default under this Covenant or upon default under any notes Owner has executed in favor of the City, or any deed of trust, or any other lien, including a judgment, tax or Homeowner's Association lien, recorded against the Property. The City shall have thirty (30) days after declaring a default or receiving notice that a default is declared on any other obligation secured by this Property to notify the Owner of its decision to exercise its option to purchase. Not later than sixty (60) days after the certified mailing of the notice to exercise its option, the City or its assignee shall purchase the Property for the following option price:

The lesser of the following:

1. The Maximum Sales Price calculated as of the date of violation or default as per Section X, less six percent (6%) to cover the City's resale costs, and less the amount necessary to repair any damage and correct deferred maintenance as reasonably determined by the City;
2. The appraised value of the Property as determined by a state licensed appraiser approved by Owner and City, less six percent (6%) to cover the City's resale costs; or
3. The amount necessary to pay the balance due on any City-approved financing.

XV. CITY REQUIREMENTS AND AUTHORIZATIONS FROM OWNER

A. City Requirements from Owner

1. Annual Certification

- a. Each year on October 15, or on such other date as specified by the City in writing, Owner shall submit an Annual Certification, signed by Owner under penalty of perjury, which includes Owner's statement that Owner has occupied the Property and complied with all provisions of this Covenant, or includes Owner's explanation of any financing, occupancy or other violation of any provision of this Covenant.

b. The Annual Certification required under this Section shall be mailed or delivered as follows:

City of Santa Barbara, Community Development Department
Attn: Housing Programs
P.O. Box 1990
Santa Barbara, California, 93102-1990

or to such other person or address designated by the City.

c. Failure to provide a report within 30 days of the specified date, or any misrepresentations on the report, shall constitute a default under this Covenant.

B. Owner's Authorizations to City

1. Right of City to Inspect Property

Owner shall permit City staff the right to enter and inspect the Property during normal business hours upon at least 72-hours advance notice to Owner. An Owner's refusal to permit inspection will be a default under the Covenant.

2. Right of City to obtain status of Owner's loans

Owner authorizes City to contact Owner's lender or lenders to obtain current loan status at any time without further written authorization from Owner.

XVI. ADDITIONAL PROVISIONS

A. Assignment

The City may assign its rights and delegate its duties hereunder without the consent of Owner. Upon such assignment the City shall notify the Owner.

B. Purchase of Other Residential Real Estate

The Owner covenants that they have not and will not execute any other agreement to purchase or purchase any other residential real property during their ownership of the Property.

C. Severability

If any one or more of the provisions contained in this Covenant shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Covenant and this Covenant be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

D. Choice of Law; Venue

The terms of this Covenant shall be interpreted under the laws of the State of California.

E. Notices

All notices required herein shall be sent by certified mail, return receipt requested, to the Owner at the address of the Property and to the City at: Community Development Department, Attn: Housing Programs, City of Santa Barbara, P.O. Box 1990, Santa Barbara, CA 93102-1990, or such other address that the City may subsequently provide in writing to the Owner.

F. Recordation of Request for Notice of Default, Request for Notice of Delinquency

Owner agrees to permit the City to record a Request for Notice of Default and a Request for Notice of Delinquency at any time.

XVII. DECLARATION OF EACH SELLER

A. I have been in compliance with the affordability and owner-occupancy requirements of the City during the entire period during which I owned the Property, and this sale is in compliance with those requirements.

B. I have not rented the Property except as has been approved by the City in writing.

C. The sale price of the Property in this transaction is the amount listed in Declaration by City below, and I have not received and will not receive any payment or consideration from the purchasers except as is disclosed in the purchase contract and escrow documents which have been delivered to and approved by the City.

D. I understand that any false statements or misrepresentations to the City in this transaction will constitute a default under this covenant, and may constitute fraud.

XVIII. DECLARATION OF EACH OWNER

A. The financial and other information provided by me is true and complete.

B. I have received a copy of this Covenant and agree to comply with the all of the requirements of this Covenant.

C. I will occupy the Property as my principal residence.

D. No persons or entity will be on title to the Property other than as listed below as Occupant Purchasers or Non-Occupant Title-holders. I understand that the City must give its approval in writing before anyone else may be listed on the title.

E. The purchase price of the Property is the amount listed in the Declaration by City, below. I have not paid and will not pay any consideration to the seller, or any real estate commissions, or any costs normally paid by sellers, except as already disclosed in the purchase contract and escrow instructions which have been delivered to and approved by the City.

F. I understand that any false statements or misrepresentations to the City in this transaction will constitute a default under this covenant, and may constitute fraud.

XIX. DECLARATION BY NON-OCCUPANT TITLE-HOLDERS (IF ANY)

A. I appear on the title to the Property as a tenant in common only because I am a co-borrower for the purpose of helping the Owner qualify for the purchase money loan. My equity interest in the Property will not be greater than one percent (1%) of the total equity of all owners of the Property, and I will receive no money from the sale of the property in excess of this one percent, except as provided in Section XIX.C below.

B. I acknowledge and agree that I have not been approved by the City as an eligible transferee, and I am not permitted to occupy the Property at any time, and that my occupancy of the Property will constitute a default under the Covenant.

C. If I am named in the will of the Owner I may receive an equity interest upon the death of the Owner. However, unless at that time I am certified as an eligible transferee by the City, I will not be permitted to occupy the Property, and will be required to sell my interest to an eligible transferee under the provisions of the Covenant.

D. I understand that any false statements or misrepresentations to the City in this transaction will constitute a default under this covenant, and may constitute fraud.

XX. DECLARATION BY CITY

A. The City has reviewed the financial information and other information submitted by the undersigned Owner . Based on this information the City has found the Owner to be eligible transferees as required by the Covenant.

B. The sale price of the Property in this transaction (the City approved purchase price paid by Owner) is _____ AND 00/100 (\$_____). This price includes the following projected increase ("mid-year adjustment") in the sale price for the period from the latest change in the AMI to the date of sale: \$_____. At the date of this sale the Area Median Income = \$_____. The date of the initial sale of the Property was _____. For information purposes only, the amount of City financing (if any) provided at the initial sale of the property was \$-0-.

THIS _____-BEDROOM UNIT IS RESTRICTED TO QUALIFIED _____ INCOME OWNERS

(Signatures appear on the following page. No further text appears on this page.)

IN WITNESS WHEREOF, the Parties have executed this Covenant as of the date first written

SELLER:

OWNER:

CITY OF SANTA BARBARA, by:

Community Development Director

NOTE: This Covenant will be recorded; a Notary Public must acknowledge the signature of the parties.

Approved as to form:

Approved as to content:

Assistant City Attorney

Housing Programs Supervisor